



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2018-0125; FRL-9995-69-Region 5]**

**Air Plan Approval; Ohio; Revisions to NO<sub>x</sub> SIP Call and CAIR**

**Rules**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve under the Clean Air Act (CAA) a request from the Ohio Environmental Protection Agency (Ohio EPA) to revise the Ohio State Implementation Plan (SIP) to incorporate revisions to Ohio Administrative Code (OAC) Chapter 3745-14 regarding the Nitrogen Oxides (NO<sub>x</sub>) SIP Call and the removal of OAC Chapter 3745-109 regarding the Clean Air Interstate Rule (CAIR). This SIP revision would ensure continued compliance by Electric Generating Units (EGUs) and large non-EGUs with the requirements of the NO<sub>x</sub> SIP Call.

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2018-0125 at <https://www.regulations.gov>, or via email to [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov). For comments submitted at

Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

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**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background of this SIP submission?
- II. What is EPA's analysis of this SIP submission?
- III. What action is EPA Taking?
- IV. Incorporation by Reference.
- V. Statutory and Executive Order Reviews.

**I. What is the background of this SIP submission?**

Under CAA section 110(a)(2)(D)(i)(I), called the good neighbor provision, states are required to address interstate transport of air pollution. Specifically, the good neighbor provision provides that each state's SIP must contain provisions prohibiting emissions from within that state from contributing significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS), or interfering with maintenance of the NAAQS, in any other state.

On October 27, 1998, EPA published the NO<sub>x</sub> SIP Call, which required eastern states, including Ohio, to submit SIPs that prohibit excessive emissions of ozone season NO<sub>x</sub> by implementing statewide emissions budgets (63 FR 57356). The NO<sub>x</sub> SIP Call

addressed the good neighbor provision for the 1979 ozone NAAQS and was designed to mitigate the impact of transported NO<sub>x</sub> emissions, one of the precursors of ozone. EPA developed the NO<sub>x</sub> Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO<sub>x</sub> SIP Call. This trading program allowed certain sources to participate in a regional cap and trade program: EGUs with capacity greater than 25 megawatts; and large non-EGUs, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr). The NO<sub>x</sub> SIP Call also identified potential reductions from Portland cement kilns and stationary internal combustion engines. In fulfillment of the requirements of the NO<sub>x</sub> SIP Call, Ohio EPA promulgated OAC Chapter 3745-14 which, among other things, required EGUs and large non-EGUs in the state to participate in the NO<sub>x</sub> Budget Trading Program. On August 5, 2003, EPA published an action approving this initial version of OAC Chapter 3745-14 into the Ohio SIP (68 FR 46089). EPA has subsequently approved revised portions of OAC Chapter 3745-14 into the SIP, with the most recent revision published on November 14, 2013 (78 FR 68367).

On May 12, 2005, EPA published CAIR, which required eastern states, including Ohio, to submit SIPs that prohibited emissions

consistent with annual and ozone season NOx budgets and annual sulfur dioxide (SO<sub>2</sub>) budgets (70 FR 25152). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter (PM<sub>2.5</sub>) NAAQS and was designed to mitigate the impact of transported NOx emissions, a precursor of ozone as well as PM<sub>2.5</sub>, as well as transported SO<sub>2</sub> emissions, another precursor of PM<sub>2.5</sub>. Like the NOx SIP Call, CAIR also established several trading programs that states could use as mechanisms to comply with the budgets. When the CAIR trading program for ozone season NOx was implemented beginning in 2009, EPA discontinued administration of the NOx Budget Trading Program, but the requirements of the NOx SIP Call continued to apply. To meet the requirements of CAIR, Ohio EPA promulgated OAC Chapter 3745-109, which required EGUs to participate in the CAIR annual SO<sub>2</sub> and annual and ozone season NOx trading programs.

Participation by EGUs in the CAIR trading program for ozone season NOx addressed the state's obligation under the NOx SIP Call for those units. Ohio EPA also opted to incorporate large non-EGUs previously regulated under OAC Chapter 3745-14 into OAC Chapter 3745-109, to meet the obligations of the NOx SIP Call with respect to those units through the CAIR trading program as well. On September 25, 2009, EPA published an action approving OAC Chapter 3745-109 into the Ohio SIP (74 FR 48857).

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *North Carolina v. EPA*, 531 F.3d 896, modified, 550 F.3d 1176 (2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued as planned with the NO<sub>x</sub> annual and ozone season programs beginning in 2009 and the SO<sub>2</sub> annual program beginning in 2010.

On August 8, 2011, acting on the D.C. Circuit's remand, EPA published the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 PM<sub>2.5</sub> NAAQS, and the 2006 PM<sub>2.5</sub> NAAQS (76 FR 48208). Through Federal Implementation Plans (FIPs), CSAPR required EGUs in eastern states, including Ohio, to meet annual and ozone season NO<sub>x</sub> budgets and annual SO<sub>2</sub> budgets implemented through new trading programs. CSAPR also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. Participation by a state's EGUs in the CSAPR trading program for ozone season NO<sub>x</sub> generally addressed the

state's obligation under the NOx SIP Call for EGUs. However, CSAPR did not initially contain provisions allowing states to incorporate large non-EGUs into that trading program to meet the requirements of the NOx SIP Call for non-EGUs.

CSAPR was intended to become effective January 1, 2012; however, the timing of CSAPR's implementation was impacted by subsequent litigation in which the D.C. Circuit stayed implementation of the rule pending judicial review. See Per Curium Order, *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (December 30, 2011), ECF No. 1350421. After subsequent litigation,<sup>1</sup> the court granted EPA's motion to lift the stay<sup>2</sup> and, on December 3, 2014, EPA issued an interim final rule, setting the updated effective date of CSAPR as January 1, 2015 (79 FR 71663). In accordance with the interim final rule, EPA stopped administering the CAIR trading programs with respect to

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<sup>1</sup> *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 31 (D.C. Cir. 2012) (*EME Homer City I*) (vacating and remanding CSAPR); *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489 (2014) (reversing the D.C. Circuit decision and remanding for further proceedings).

<sup>2</sup> Per Curium Order, *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Oct. 23, 2014) ECF No. 1518738. The D.C. Circuit subsequently issued its decision on remand from the Supreme Court, largely affirming CSAPR but remanding certain states budgets to EPA for reconsideration. *EME Homer City Generation, L.P., v. EPA*, No. 795 F.3d 118 (*EME Homer City II*)

emissions occurring after December 31, 2014, and EPA began implementing CSAPR on January 1, 2015.<sup>3</sup>

On October 26, 2016, EPA published the CSAPR Update, which established a new ozone season NOx trading program for EGUs in eastern states, including Ohio, to address the good neighbor provision for the 2008 ozone NAAQS (81 FR 74504). As under CSAPR, participation by a state's EGUs in the new CSAPR trading program for ozone season NOx generally addressed the state's obligation under the NOx SIP Call for EGUs. The CSAPR Update also expanded options available to states for meeting NOx SIP Call requirements for large non-EGUs by allowing states to incorporate those units into the new trading program.

After evaluating the various options available following CSAPR Update, Ohio EPA chose to meet the ongoing NOx SIP Call requirements for existing and new large non-EGUs by modifying its existing regulations at OAC Chapter 3745-14 to make the portion of the budget assigned to large non-EGUs under that program enforceable without an allowance trading mechanism.

Specifically, while Ohio rescinded portions of its NOx Budget Trading Program rules under OAC Chapter 3745-14 pertaining to individual unit allowance allocations and trading,

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<sup>3</sup> EPA solicited comment on the interim final rule and subsequently issued a final rule affirming the amended compliance schedule after consideration of comments received. 81 FR 13275 (March 14, 2016).

the state retained and amended the provisions of those rules pertaining to applicability, the statewide emissions budgets for EGUs and large non-EGUs, and monitoring and reporting under 40 CFR part 75. Ohio also retained a provision of the trading program rules exempting EGUs covered by a more recent ozone season NOx trading program from coverage under the state's amended program, but updated the provision to base the exemption on participation in the CSAPR Update trading program for ozone season NOx instead of the corresponding CAIR trading program. In addition, Ohio retained other rules under OAC Chapter 3745-14 addressing NOx emissions from cement kilns and stationary internal combustion engines outside the NOx Budget Trading Program. Finally, Ohio also rescinded its CAIR trading program rules in OAC Chapter 3745-109 in full.

As described in its February 5, 2018 submission, Ohio EPA invited public comments regarding its changes to OAC Chapter 3745-14 and OAC Chapter 3745-109. Ohio EPA received one supportive comment, as well as one adverse comment regarding Ohio's retention of part 75 monitoring requirements.

On March 8, 2019, EPA finalized updates to the NOx SIP Call rules to allow states to meet the NOx SIP Call's monitoring requirements using approaches other than part 75 monitoring (84 FR 8422). Ohio's February 5, 2018, submission predates EPA's

updates to the NOx SIP Call's monitoring requirements, and, therefore, does not include changes that allow its sources to meet the NOx SIP Call's monitoring requirements using approaches other than part 75 monitoring. EPA is assisting Ohio EPA with preparing a revised submission that would make other monitoring approaches available to Ohio sources, and EPA will address such a submission in a future rulemaking.

## **II. What is EPA's analysis of this SIP submission?**

Ohio's February 5, 2018 submission requests that EPA update Ohio's SIP to reflect the revised rules at OAC Chapter 3745-14 and the rescission of rules at OAC Chapter 3745-109.

Additionally, this submission includes a demonstration under Section 110(1) of the CAA intended to show that this SIP revision does not interfere with any applicable CAA requirement.

### **A. Revised and rescinded state rules**

Given EPA's replacement of CAIR with CSAPR and EPA's discontinuation of administration of the NOx Budget Trading Program, Ohio updated its NOx SIP Call rules at OAC Chapter 3745-14 to address the NOx SIP Call's requirements with respect to existing and new large non-EGUs in a manner that does not rely on the administration of a trading program. Ohio also rescinded its CAIR rules at OAC Chapter 3745-109. Both sets of rule changes have a state-effective date of January 28, 2018.

Ohio's February 5, 2018, submission includes a request that EPA approve these updated rules into its SIP.

The state regulations addressing the NOx SIP Call were formerly established at OAC rules 3745-14-01 through 3745-14-12. Because EPA discontinued administration of this trading program in 2009, Ohio has rescinded certain portions of these rules that can no longer be implemented. Specifically, Ohio rescinded OAC rules 3745-14-02, 3745-14-05, 3745-14-06, 3745-14-07, 3745-14-09, and 3745-14-10 pertaining to individual unit allowance allocations, trading, opt-in, and other non-implementable provisions under the NOx Budget Trading Program. However, for purposes of continued compliance with the requirements of the NOx SIP Call, Ohio retained and amended OAC rules 3745-14-01, 3745-14-03, 3745-14-04, and 3745-14-08 pertaining to applicability, the statewide emissions budgets for EGUs and large non-EGUs, and part 75 monitoring and reporting under the former trading program. Ohio also retained OAC rules 3745-14-11 and 3745-14-12 regarding cement kilns and stationary internal combustion engines outside the former trading program. The state's amendments to OAC rule 3745-14-01 require Ohio EPA to ensure that the statewide budget for large non-EGUs will continue to be met in the absence of a trading program

mechanism. Table 1 presents a summary of Ohio's revisions to OAC Chapter 3745-14.

**Table 1. Revisions to OAC Chapter 3745-14**

<b>Rule</b>	<b>Title</b>	<b>Action</b>
3745-14-01	Definitions and General Provisions	Amended
3745-14-02	The NOx Authorized Account Representatives	Rescinded
3745-14-03	The NOx Budget Permit Requirements	Amended
3745-14-04	Compliance Certification	Amended
3745-14-05	NOx Allowance Allocations	Rescinded
3745-14-06	The NOx Allowance Tracking System	Rescinded
3745-14-07	NOx Allowance Transfers	Rescinded
3745-14-08	Monitoring and Reporting	Amended
3745-14-09	NOx Budget Opt-in Units	Rescinded
3745-14-10	Alternative Compliance Plans	Rescinded
3745-14-11	Portland Cement Kilns	No change
3745-14-12	Stationary Internal Combustion Engines	No change

Specifically, these amendments include: moving the statewide NOx budgets for large EGUs and large non-EGUs from OAC rule 3745-14-05, which is being rescinded, to OAC rule 3745-14-01; adding provisions requiring Ohio EPA to conduct an annual review to determine if the statewide budget for large non-EGUs is met, and providing procedures should the budget be exceeded; removing unit allowance allocation and trading provisions; specifying non-EGU NOx budget units subject to OAC Chapter 3745-14; updating the applicability exception for EGUs to reference CSAPR instead of CAIR; removing the retired unit exemption, as it is no longer applicable; removing unnecessary definitions; adding a definition for "designated representative"; replacing "NOx budget trading program" with "NOx budget program" to reflect the absence of trading; replacing "NOx Authorized

Account Representative" with "designated representative", the term used in part 75 monitoring; updating referenced material; eliminating requirements for a NOx budget permit to be included as a complete and segregable portion of a title V or non-title V permit; requiring the owner or operator of a NOx budget unit to submit an application for a title V or non-title V operating permit for each subject source; revising compliance certification provisions to remove unnecessary provisions; eliminating the requirement for the compliance certification to be submitted to EPA; updating monitoring and reporting provisions, most notably to remove unnecessary references to opt-in permits and early reduction credits; and eliminating NOx budget opt-in provisions, as they are no longer applicable.

Further, the state's regulations for participation in the CAIR trading programs for SO<sub>2</sub> and annual and ozone season NOx were formerly established at OAC Chapter 3745-109. Because EPA discontinued administration of the CAIR trading programs after 2014, Ohio has rescinded these rules that can no longer be implemented.

First, EPA proposes to approve the rescission of the trading program-related portions of Ohio's NOx Budget Trading Program rules and all of Ohio's CAIR trading program regulations. Because EPA no longer administers the NOx Budget

Trading Program and the CAIR trading programs, and therefore Ohio's own regulations related to these trading programs cannot be implemented, removing the trading program provisions of Ohio's NOx SIP Call rules and all of the CAIR rules from the state's SIP will have no consequences for any source's operations or emissions or for the attainment and maintenance of the NAAQS in any area, now or in the future. Accordingly, removal of these rules does not impact the state's continued compliance with section CAA 110(a)(2)(D)(i)(I) for any NAAQS.

Further, EPA proposes to find that Ohio's revisions to OAC rules 3745-14-01, 3745-14-03, 3745-14-04, and 3745-14-08 are consistent with Ohio's obligation to demonstrate continued compliance with NOx SIP Call requirements for large non-EGUs and EPA's discontinuation of the trading program under the NOx SIP Call. Under the ongoing requirements of the NOx SIP Call, the Ohio SIP must: (1) include enforceable control measures for ozone season NOx mass emissions from existing and new large EGUs and large non-EGUs and (2) require those sources to monitor and report ozone season NOx emissions, which may be in accordance with part 75. See 40 CFR 51.121(f)(2) and (i).

With respect to the NOx SIP Call requirement that the state have enforceable control measures to limit ozone season NOx, Ohio is currently subject to the Federal CSAPR Update trading

program for ozone season NOx that addresses these requirements for existing and new EGUs, but because Ohio's non-EGUs are not subject to that CSAPR trading program, the state must meet this requirement for non-EGUs through other SIP provisions. Ohio's revisions to OAC rule 3745-14-01 prohibit ozone season NOx emissions from existing and new large non-EGUs from exceeding 4,028 tons, the portion of the state's NOx SIP Call budget assigned to large non-EGUs. Under the revisions at OAC rule 3745-14-01, Ohio will conduct an annual review to ensure that the most recent ozone season emissions from large non-EGUs remain below the statewide budget. Emissions reported to EPA from the state's large non-EGUs for the 2018 ozone season were 543 tons, well below this limit.

As to the requirement for sources to monitor and report ozone season NOx emissions under the NOx SIP Call, these SIP revisions would preserve the state's current requirements for existing and new EGUs and non-EGUs to monitor and report their ozone season NOx emissions, as required under the NOx SIP Call. Ohio's revisions at OAC Chapter 3745-14 continue to require that non-EGUs monitor and report ozone season NOx emissions under part 75, and the state's EGUs are subject to equivalent monitoring requirements under the CSAPR federal trading programs. Thus, the revisions to OAC Chapter 3745-14 and

removal of OAC Chapter 3745-109 proposed for approval into the SIP in this action will not substantively alter the current monitoring requirements for any EGUs or large non-EGUs in the state covered by the NOx SIP Call. If, as anticipated, Ohio EPA submits to EPA a SIP revision that would make other monitoring approaches available to large non-EGUs, the monitoring requirements under the NOx SIP Call will be the subject of a future rulemaking.

As revised, OAC rules 3745-14-01, 3745-14-03, 3745-14-04 and 3745-14-08 meet the state's ongoing obligations under the NOx SIP Call with respect to existing and new large non-EGUs. Specifically, the revised rules meet the requirement under 40 CFR 51.121(f)(2) for enforceable limits on the units' collective emissions of ozone season NOx mass emissions and the requirement under 40 CFR 51.121(i)(1) for monitoring sufficient to ensure compliance with those limits. The state's EGUs are currently complying with their analogous NOx SIP Call requirements through participation in the CSAPR Update trading program for ozone season NOx.

EPA is proposing to find that Ohio EPA's revisions at OAC Chapter 3745-14 and removal of OAC Chapter 3745-109 are consistent with applicable requirements under the CAA and the

NOx SIP Call, and EPA is therefore proposing to approve these changes into the Ohio SIP.

Additionally, the revisions at OAC rules 3745-14-01, 3745-14-03, and 3745-14-08 include minor amendments that were effective in 2015 and 2018 but were not submitted for SIP approval because they were not substantive changes. EPA's approval of Ohio's revised rules with state-effective date January 28, 2018, would also approve these minor amendments into the SIP. These revisions include: updating hyperlinks and references, correcting typographical and formatting errors, and clarifying procedures for permit applications.

#### **B. Section 110(1) demonstration**

Ohio EPA's submission includes a demonstration intended to show that its SIP revision is approvable under Section 110(1) of the CAA; such a demonstration is sometimes called an anti-backsliding demonstration. Section 110(1) provides that EPA cannot approve a SIP revision if the revision would interfere with any applicable CAA requirement. EPA will approve a SIP revision that removes or modifies control measures in the SIP only after the state has demonstrated that such removal or modification would not interfere with attainment and maintenance of the NAAQS, reasonable further progress (RFP), or any other applicable requirement of the CAA. EPA generally considers

whether the SIP revision would preserve or improve the status quo in air quality.

In this action, EPA is proposing to approve Ohio's request to approve updated rules related to the NOx SIP Call into its SIP and to approve removal of CAIR rules from its SIP. This proposed action would remove from the SIP certain provisions relating to the NOx Budget Trading Program and replace those provisions with new rules at OAC Chapter 3745-14 that address the NOx SIP Call's requirements with respect to existing and new large non-EGUs in a manner that does not rely on the administration of a trading program. It would also remove the CAIR rules at OAC Chapter 3745-109.

For the reasons explained below, EPA's proposed action to update the provisions relating to the NOx Budget Trading Program and NOx SIP call is in accordance with CAA section 110(1). As explained above, EPA has not implemented the NOx Budget Trading Program since 2009 and it could not be implemented in the future. Moreover, this action would only remove the provisions that implement the trading program. It would neither alter the NOx SIP Call emission budgets that limit emissions in the state nor alter the requirement for sources to monitor and report ozone season NOx emissions under the NOx SIP Call. This action would also add to the SIP a new enforceable measure to replace

the defunct NOx Budget Trading Program and ensure compliance with the NOx SIP Call budgets. This new measure is quantifiable, permanent, enforceable and contemporaneous. Importantly, the new measure ensures compliance with the existing NOx SIP Call budgets and thus will preserve the status quo in air quality. For these reasons, we conclude that the revisions will not interfere with attainment and maintenance of the NAAQS, RFP, or any other applicable requirement of the CAA.

Additionally, EPA's proposed action to remove the CAIR rules at OAC Chapter 3745-109 is consistent with the requirements of CAA 110(1). As explained above, EPA has not administered the CAIR trading programs since 2015, when the CSAPR trading programs replaced the CAIR trading programs. Likewise, the related provisions in Ohio's SIP have not been implemented since 2015 and cannot be implemented now or in the future. As such, removing the CAIR rules from the state's SIP will have no consequences for any source's operations or emissions.

Current emission levels in Ohio further demonstrate that the CAIR trading programs are not influencing and would not influence affected sources' operations. As shown in Table 2 below, current emissions levels are significantly below the CAIR

budgets even while the CAIR trading programs are no longer being implemented.

**Table 2. Comparison of Ohio CAIR budgets and 2018 emissions, in tons<sup>1</sup>**

Emissions type	CAIR Phase 1 budget	CAIR Phase 2 budget	2018 Emissions
NOx ozone season	49,694	43,975	17,949
NOx annual	108,667	90,556	50,629
SO <sub>2</sub> annual	333,520	233,464	86,570

<sup>1</sup> Ohio's budgets under CAIR are from EPA's approval of OAC Chapter 3745-109 into the SIP on September 25, 2009 (74 FR 48857). Ozone season NOx budgets under CAIR are the combined EGU and non-EGU budgets. Emissions data from 2018 are from EPA's Air Markets Program Database at <https://ampd.epa.gov>.

Importantly, EPA was obligated by the D.C. Circuit remand of CAIR to promulgate a new rule to replace CAIR. EPA addressed this judicial remand with the promulgation of CSAPR. EGUs in Ohio are subject to FIPs requiring the sources to participate in annual NOx, annual SO<sub>2</sub>, and ozone season NOx<sup>4</sup> Federal trading programs under CSAPR and the CSAPR Update that limit emissions from such sources in the state. EGUs continue to be subject to part 75 monitoring requirements under the current CSAPR trading program rules.

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4 The D.C. Circuit ultimately remanded Ohio's CSAPR Phase 2 budget for ozone season NOx, finding that the rulemaking record did not support EPA's determination of a transport obligation under the 1997 ozone NAAQS for Ohio. *EME Homer City Generation, L.P., v. EPA*, 795 F.3d 118, 129-30 (2015). In response, EPA withdrew Ohio's remanded budget in the CSAPR Update rulemaking; concurrently, however, EPA promulgated a new emission budget to address the 2008 ozone NAAQS, which replaced the invalidated CSAPR budget intended to address the 1997 ozone NAAQS. 81 FR 74524. Thus, EGUs in Ohio remain subject to a CSAPR trading program for ozone-season NOx.

For the reasons explained above, EPA is proposing to approve Ohio EPA's SIP submission under section 110(l) of the CAA.

### **III. What Action is EPA Taking?**

EPA is proposing to approve Ohio EPA's request to modify its SIP to include the revisions at OAC Chapter 3745-14 and to remove OAC Chapter 3745-109.

### **IV. Incorporation by Reference.**

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference OAC rules 3745-14-01, 3745-14-03, 3745-14-04, and 3745-14-08, with a state effective date of January 28, 2018. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

Also in this document, as described in the proposed amendments to 40 CFR part 52 set forth below, the EPA is proposing to remove provisions of the EPA-Approved Illinois Regulations and Statutes from the Illinois State Implementation

Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

## **V. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 13, 2019.

Cathy Stepp,  
Regional Administrator, Region 5.